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State v. Pratt Respondent's Brief Dckt. 40940

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IN THE SUPREME COURT OF THE STATE OF IDAHO

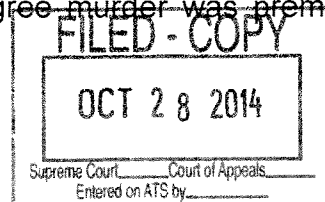
STATE OF IDAHO,)	
)	NO. 40940
Plaintiff-Respondent,)	
)	Bonner County Case No.
v.)	CR-1989-85830
)	
JOSEPH EARL PRATT,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
)	

ISSUE

Has Pratt failed to show the district court erred in denying his I.C.R. 35(a) motion to correct an illegal sentence?

Pratt Has Failed To Show The District Court Erred In Denying His I.C.R. 35(a) Motion To Correct An Illegal Sentence

Pratt was convicted of first-degree murder (among other things) for a robbery gone wrong that ultimately resulted in the killing of Forest Service Officer Brent Jacobson. State v. Pratt, 125 Idaho 594, 595, 873 P.2d 848, 849 (1994); see also Id. at 600-01, 873 P.2d at 854-55. The jury verdict for first-degree murder was premised



upon both the finding that the victim was a peace officer and the finding that the murder was committed in the course of a robbery, burglary or kidnapping. Id. at 597-98, 873 P.2d at 851-52. The Idaho Supreme Court vacated the former ground, concluding that because the killing did not occur on Forest Service land but on private property, Officer Jacobson was not a peace officer for purposes of the statute. Id. It affirmed the first-degree murder conviction on the second ground, however. Id. It also affirmed the sentence of life with 25 years determinate, consecutive to the other sentences, for first-degree murder. Id. at 600-01, 873 P.2d at 854-55.

Pratt thereafter filed seven Rule 35 motions. State v. Pratt, 2009 WL 9151478, *1 (Idaho App., Oct. 14, 2009) (unpublished, copy attached as an appendix). In his second or third motion he “questioned the legality of the first degree murder sentence” but did not appeal the denial of that motion. Id. In his sixth Rule 35 motion he asserted “his sentence for first degree murder is illegal because one ground for the conviction was vacated.” Id. The denial of this sixth motion was affirmed by the Idaho Court of Appeals on the basis of *res judicata*. Id. at *2.

Pratt filed an eighth Rule 35 motion. (R., pp. 16-34.) In it Pratt asserted that he was entitled to a new sentence or a new sentencing hearing because the Supreme Court vacated one of the bases for his first-degree murder conviction. (R. p. 21.) The district court denied this claim, holding it was barred by *res judicata* because that issue had been raised “numerous times in his previous Rule 35 motions.” (R., pp. 40-42.) The state submits that this ruling was correct for the reasons stated by the Idaho Court of Appeals in State v. Pratt, 2009 WL 9151478 (Idaho App., Oct. 14, 2009) (appendix).


Moreover, Pratt's argument appears to be that the Idaho Supreme Court's determination that Jacobson was not a "peace officer" for purposes of the murder statute made the district court's factual findings at sentencing incorrect and therefore he was entitled to a new sentencing that never occurred. (See, generally, R., pp.16-34; Appellant's brief.) Idaho Criminal Rule 35(a) is a narrow rule that allows a trial court to correct a sentence that is illegal from the face of the record any time. State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009). An illegal sentence under I.C.R. 35(a) is one in excess of a statutory provision or otherwise contrary to applicable law. State v. Alsanea, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003). I.C.R. 35(a) is not a vehicle by which individuals may raise issues that involve significant questions of fact, or require an evidentiary hearing. Clements, 148 Idaho at 84, 218 P.3d at 1145. Whether a sentence is illegal is a question of law that is freely reviewed by the court on appeal. Id. Pratt's claims of *factual* error or procedural irregularities in his sentencing are not within the scope of Rule 35(a).

The district court properly concluded Pratt's claim was previously litigated and therefore barred by *res judicata*. Alternatively, Pratt's motion was not predicated on a claim that his sentence of life with 25 years determinate was illegal from the face of the record, but instead on claims of erroneous factual findings or asserted procedural errors. Therefore it was not within the scope of Rule 35(a). Pratt has therefore failed to show that the district court erred in denying his I.C.R. 35(a) motion to correct an illegal sentence.

CONCLUSION

The state respectfully requests that this court affirm the district court's denial of Pratt's I.C.R. 35(a) motion.

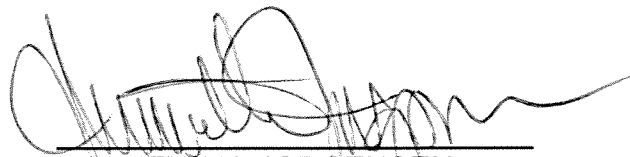
DATED this 28th day of October, 2014


KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 28th day of October, 2014, served two true and correct copies of the attached RESPONDENT'S BRIEF by placing the copies in the United States mail, postage prepaid, addressed to:

JOSEPH EARL PRATT
IDOC # 29518
ISCI, Unit 13
PO Box 14
Boise, ID 83707


KENNETH K. JORGENSEN
Deputy Attorney General

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(Cite as: 2009 WL 9151478 (Idaho App.))

Only the Westlaw citation is currently available.

No unpublished opinion shall constitute precedent or be binding upon any court. Except to the extent required by res judicata, collateral estoppel, the law of the case doctrine or any other similar principle of law, no unpublished opinion shall be cited as authority to any court.

Court of Appeals of Idaho.
STATE of Idaho, Plaintiff–Respondent,
v.
Joseph PRATT, Defendant–Appellant.

No. 35602.
Oct. 14, 2009.

Appeal from the District Court of the First Judicial District, State of Idaho, Bonner County. Hon. John T. Mitchell, District Judge.

Orders denying motions for correction of sentences, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rosemary Emory, Deputy Attorney General, Boise, for respondent.

THIS IS AN UNPUBLISHED OPINION AND SHALL NOT BE CITED AS AUTHORITY

LANSING, Chief Judge.

*1 Following a jury trial, Joseph Pratt was found guilty of several crimes. Subsequent to sentencing, Pratt filed numerous Idaho Criminal Rule 35 motions. Pratt appeals the denial of two of those Rule 35 motions, asserting that three of his sentences are illegal. We affirm.

**I.
BACKGROUND**

In November 1989, Pratt was convicted of first degree burglary, robbery, second degree kidnapping, ten counts of aggravated *assault*, aggravated assault upon a law enforcement officer, attempted first degree murder, and first degree murder. The first degree murder conviction was based on two grounds—that the killing occurred during the perpetration or attempted perpetration of robbery, burglary, or kidnapping, Idaho Code section 18–4003(d), and that the person killed was a peace officer acting within the scope of his duties, I.C. § 18–4003(b). In response to a motion pursuant to Idaho Criminal Rule 35 for correction of Pratt's sentences, the trial court merged the sentences for burglary, robbery, and second degree kidnapping into the sentence for first degree murder. On appeal, the Idaho Supreme Court vacated the I.C. § 18–4003(b) ground for the first degree murder conviction but upheld the I.C. § 18–4003(d) ground, thus affirming the first degree murder conviction. *State v. Pratt*, 125 Idaho 594, 597–98, 873 P.2d 848, 851–52 (1994). Additionally, the Court vacated the conviction for attempted felony murder. *Id.* at 601, 873 P.2d at 855. The Court affirmed all of Pratt's other convictions and sentences. *Id.* at 600–01, 873 P.2d at 854–

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55.

Pratt subsequently filed a series of motions for reduction or correction of his sentences. Among other issues, Pratt's second through fifth Rule 35 motions raised double jeopardy and merger issues based on the idea that Pratt engaged in one continuous course of conduct, and questioned the continuing legality of the first degree murder sentence. Pratt appealed the denials of only his fourth and fifth Rule 35 motions, and the denials were affirmed. *State v. Pratt*, Docket No. 29866 (Ct.App. Sept. 2, 2004) (unpublished). Only Pratt's sixth, March 23, 2007, and seventh, July 28, 2008, Rule 35 motions for correction of an illegal sentence are at issue in this appeal. Pratt asserts his March 23 motion should have been granted as his sentence for first degree murder is illegal because one ground for the conviction was vacated. Pratt asserts his July 28 motion should have been granted because his sentences for aggravated assault and aggravated assault on a law enforcement officer are illegal as they are multiple punishments for a single act.

II.

DISCUSSION

Under Idaho Criminal Rule 35, the district court may correct an illegal sentence at any time. Whether a sentence is illegal is a question of law freely reviewable by this Court. *State v. Josephson*, 124 Idaho 286, 287, 858 P.2d 825, 826 (Ct.App.1993); *State v. Rodriguez*, 119 Idaho 895, 897, 811 P.2d 505, 507 (Ct.App.1991). However, the doctrine of res judicata bars consideration of Rule 35 motions that raise issues already finally decided in earlier Rule 35 motions. *State v. Rhoades*, 134 Idaho 862, 863, 11 P.3d 481, 482 (2000); *State v. Dempsey*, 146 Idaho 327, 330, 193 P.3d 874, 877 (Ct.App.2008). To hold otherwise would permit applicants to "bypass the normal rules of appellate procedure, rather than filing a timely appeal from the order responding to his first Rule 35 motion." *Rhoades*, 134 Idaho at 863, 11 P.3d at 482 (quoting *United States v. Kress*, 944 F.2d 155, 162 (3rd Cir.1991)). Pratt asks this Court to overrule *Rhoades* or limit its application. We have no authority to do so, however, as *Rhoades* is a decision of the Idaho Supreme Court.

*2 In general, res judicata prevents the litigation of causes of action which were finally decided in a previous suit. *Hindmarsh v. Mock*, 138 Idaho 92, 94, 57 P.3d 803, 805 (2002); *Gubler by and Through Gubler v. Brydon*, 125 Idaho 107, 110, 867 P.2d 981, 984 (1994). As a general proposition, res judicata prevents litigants who were parties in a prior action and those in privity with them from bringing or having to defend a claim arising from the transaction or series of transactions giving rise to the first suit. *Id.* at 110, 867 P.2d at 984. Thus, res judicata serves to bar not just claims actually made, but claims related to the same transaction that might have been made. *Hindmarsh*, 138 Idaho at 94, 57 P.3d at 805. The question of whether an action is barred by res judicata is a question of law freely reviewable by this Court. *Rhoades*, 134 Idaho at 863, 11 P.3d at 482; *Dempsey*, 146 Idaho at 329, 193 P.3d at 876.

In this case, Pratt's sixth and seventh Rule 35 motions are barred by the doctrine of res judicata. Regarding his first degree murder sentence, Pratt acknowledges that he previously brought the illegal sentence issue to the district court and did not appeal that court's ruling, but he argues that he is entitled to have this Court rule on the issue anyway. As stated in *Rhoades*, Pratt is not allowed to circumvent the appeals process by filing successive Rule 35 motions. He has already had the opportunity to have the district court consider this argument and chose not to appeal its decision. We hold that the doctrine of res judicata bars Pratt's attempt to relitigate this issue. The same analysis

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applies to his claim that his sentences for aggravated *assault* and aggravated *assault* on a law enforcement officer are illegal because they are multiple punishments for a single act. Pratt has already litigated in prior Rule 35 motions the issue whether double jeopardy and merger preclude multiple punishments because the crimes were allegedly one continuous course of conduct. He now seeks to circumvent the appeals process by reasserting the same issues. We hold that Pratt is barred by res judicata from trying to relitigate the same issues by filing successive Rule 35 motions. Because Pratt's motions are barred by res judicata, we will not discuss the substantive arguments set forth in support or in opposition to the motions.

The orders denying Pratt's Rule 35 motions are affirmed.

Judge GRATTON and Judge MELANSON concur.

Idaho App., 2009.

State v. Pratt

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